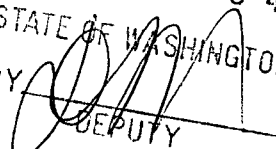


No. 47512-0

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COURT OF APPEALS
DIVISION II
2015 OCT -5 PM 3:46
STATE OF WASHINGTON
BY  DEPUTY

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

BRIAN PAUL RODERICK,
Appellant

v.

CHRISTINA MARIE RODERICK,
Respondent

REPLY BRIEF OF APPELLANT

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Attorney for Appellant

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I. ARGUMENT

A. THE TRIAL COURT ERRED BY IMPOSING RCW 26.09.191 RESTRICTIONS AGAINST MR. RODERICK.

The trial court's findings in this matter are limited to a few brief sentences simply stating that, "...Madisen, for whatever reason, is not wanting to go and spend all of the time that she would otherwise spend with Dad, according to the temporary parenting plan..." 02/19/15 VRP 105. It is clear that the court cannot find any specific abuse, physical or verbal, occurred; rather, the court simply sites a breakdown of communication between a father and his teenage daughter as proof of abuse.

The RCW 26.09.191 restrictions are not substantially supported by the evidence presented or the oral findings of the court. Instead, the court has opted to impose restrictions against the father that largely leave visitation at the discretion of the minor child. CP 85. This is highly concerning especially when coupled with the fact that the only documented evidence before the court regarding these issues is the letter from the child's counselor and the undisputed testimony from the mother that she has hit and sworn at the children. 02/19/15 VRP 70. The totality of the evidence before the court does not support residential restrictions against Mr. Roderick.

**B. THE TRIAL COURT ERRED BY FAILING TO IMPUTE
INCOME TO MS. RODERICK.**

The Respondent places much weight on the argument that due to Mr. Roderick never specifically asking the court to impute income to Ms. Roderick during the trial that he has waived that issue for appeal and likewise the trial court properly deferred to the income calculations of a pro tem Commissioner. This argument is flawed and ignores relevant law.

Mr. Roderick did properly raise the legal issue to the court in his motion for reconsideration. That motion was denied. RCW 26.19 et al tasks the court with calculating incomes for child support purposes. The statutory language is very clear in that words such as “estimate” are omitted. The court must use the best available income numbers from each party to calculate support. RCW 26.19.071.

In addition, RCW 26.19.071(6) provides that the court:

“shall input income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon the parent’s work history, education, health, and age, or any other relevant factors.”

Ms. Roderick testified that she was not fully employed. There was no testimony provided that she is disabled or otherwise unable to be gainfully employed. There is no evidence to suggest that the trial court ever considered whether or not Ms. Roderick was voluntarily underemployed even after Mr. Roderick properly raised the issue.

Ms. Roderick has considerable employment ability considering that it is undisputed that she currently earns \$14.66 an hour. Obviously if Ms. Roderick were unskilled and otherwise unemployable she would not be employed at this wage. The Respondent seems to indicate that the income calculations used for the support order were correct since the calculation is the same as what the Pro Tem Commissioner used for the temporary order of support. However, such an argument undermines the very nature of a temporary order as provided for in RCW 26.09.060.

C. THE TRIAL COURT ERRED BY NOT PROVIDING MR. RODERICK STATUTORILY REQUIRED DEDUCTIONS FROM HIS INCOME.

The Respondent's entire argument on this issue seems to be that the income number used for Mr. Roderick matches the income calculated by the Pro Tem Commissioner in the Temporary Order of Support. Again,

such an argument undermines the very essence of a temporary order as provided in RCW 26.09.060.

Mr. Roderick provided the trial court with ample proof of income in order to accurately calculate support for child support purposes. Under 26.19 et al the trial court has a statutory duty to calculate support accurately on the best available income information as set forth in statute. Here, the trial court refused to consider the documentary evidence provided and relied entirely on Mr. Roderick's confusion between gross and net incomes.

**D. THE TRIAL COURT ABUSED ITS DISCRETION BY
AWARDING MS. RODERICK SPOUSAL MAINTENANCE.**

The Respondent does not dispute the simple facts that the trial court determined Mr. Roderick's net income to be \$2,600.00 a month on the child support worksheets and out of that \$2,600.00 the court ordered a \$1,972 a month transfer payment from Mr. Roderick to Ms. Roderick for child support and spousal maintenance.

The Respondent's argument seems to rely on perceived inferences in the trial court's ruling and upon an argument that Mr. Roderick's net income is not \$2,600 a month. The bottom line is that there is nothing in the record to support the Respondent's argument that the trial court found Mr. Roderick's net income to be anything other than \$2,600.00 a month.

Under RCW 26.09.090 the trial court has a duty to evaluate the financial need of the requesting party and the financial ability of the other party to pay maintenance. Such an evaluation requires the court to consider both the economic resources and expenses of each party. RCW 26.09.090.

Neither party provided a financial declaration or detailed testimony at time of trial regarding expenses. Without this necessary information it would have been impossible for the court to fully evaluate the statutory criteria before determining maintenance. Similarly, the financial documentation provided by Mr. Roderick further solidifies his financial inability to pay maintenance and spousal support at an amount equal to approximately 76% of his income. The trial court abused its discretion by setting a combined child support and spousal maintenance payment of \$1,972 a month despite a complete lack of evidence to support such an order. See *In re the Marriage of Littlefield*, 133 Wash.2d 39, 940 P.2d 1362.

II. CONCLUSION

The trial court abused its discretion by imposing RCW 26.09.191 restrictions against Mr. Roderick without substantial evidence or specific findings to support the restriction. Similarly, the court erred both in the overall income calculations for child support along with the ordered

transfer payment of approximately 76% of Mr. Roderick's monthly disposable income. Mr. Roderick respectfully requests that the court reverse and vacate the RCW 26.09.191 restrictions against him along with the award of spousal maintenance and remand the matter to the trial court to correctly calculate child support.

DATED the 5th day of October, 2015.

RESPECTFULLY SUBMITTED,



Andrew Helland, WSBA # 43181
Attorney for Appellant.

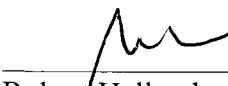
Declaration of Transmittal


Under penalty of perjury under the laws of the State of Washington
I affirm the following to be true:

On this date I transmitted the original document to the Washington
State Court of Appeals, Division II by personal service, and delivered a
copy of this document via ^{USPS First Class} ~~personal delivery~~ to the following:

Clayton Dickinson
Attorney at Law
6314 19th St. W., #20
Fircrest, WA 98466

Signed at Tacoma, Washington on this 5th day of October, 2015.


Robert Helland

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